UNITED STATES OF AMERICA
BEFORE THE
FEDERAL ENERGY REGULATORY COMMISSION

ISO New England, Inc.	)	**Docket No. ER08-41-000**
and	)	
New England Power Pool	)	

REQUEST FOR REHEARING OF THE MAINE PUBLIC UTILITIES COMMISSION AND THE INDUSTRIAL ENERGY CONSUMERS GROUP

The Maine Public Utilities Commission ("MPUC"), by and through counsel, Lisa Fink, State of Maine Public Utilities Commission, 242 State Street, 18 State House Station, Augusta, Maine 04333-0018, and Lisa S. Gast, Duncan, Weinberg, Genzer & Pembroke, P.C., 1615 M Street, NW, Suite 800, Washington, DC 20036, respectfully files this Request for Rehearing of the Federal Energy Regulatory Commission's ("Commission") December 10, 2007 Order Accepting Proposed Installed Capacity Requirement, Hydro Quebec Interconnection Capability Credits and Related Values[1] approving the October 11, 2007 filing ("October 11 Filing") by ISO New England ("ISO-NE") and New England Power Pool ("NEPOOL") of the Installed Capacity Requirement for the 2010/2011 Capability Year, the Hydro Quebec Interconnection Capability Credits ("HQICCs"), the Maximum Capacity Limit for the Maine Export Constrained Zone and the Local Sourcing Requirements for the Connecticut and Northeastern Massachusetts/Boston zone. In addition, the MPUC has

[1] *ISO New England, Inc. and New England Power Pool*, 121 FERC ¶ 61,250 (2007) ("December 10 Order").

been authorized to state that the Industrial Energy Consumers Group ("IECG") join the MPUC in the instant request for rehearing.

I. BACKGROUND

On October 11, 2008, ISO-NE and NEPOOL (jointly "Filing Parties") jointly filed a document setting the Installed Capacity Requirements ("IC Requirements" or "ICR") for power year 2010/2011. The Filing Parties stated that the values set forth in the filing will be used in the first auction under New England's Forward Capacity Market ("FCM") which will be held in February 2008. The October 11 Filing proposed an Installed Capacity Requirement value of 33,705.

A. Installed Capacity Requirement

The October 11 filing described the Installed Capacity Requirement as follows:

> The Installed Capacity Requirement is a measure of the installed resources that are projected to be necessary to meet reliability standards in light of total forecasted load requirements for the New England Control Area and to maintain sufficient reserve capacity to meet reliability standards.

Transmittal Letter at 4.[2]

B. Tie Benefits

The October 11 filing explained the purpose of Tie Benefits:

> New England's Commission-approved method for establishing the Installed Capacity Requirement requires that assumptions be made regarding the tie benefits value to be used as an input in the formula. Tie benefits from neighboring control areas reduce the Installed Capacity Requirement and the need to buy capacity within New England. The tie benefits from neighboring Control Area reflect the amount of emergency assistance that New England could rely on, without jeopardizing reliability in New York, New England or its neighboring control areas, in the event of a capacity shortage in New England.

[2] The relationship of the Installed Capacity Requirement to the Forward Capacity Auction ("FCA") is discussed below.

Transmittal Letter at 12. The October 11 filing used a 1,860 MW value for total tie benefits. The benefits are determined using a probabilistic[3] analysis[4] *See* Transmittal Letter at 14. In theory, the 1,860 MW of tie benefits would be used to reduce the amount of capacity needed by determining the amount of capacity that could be imported from each of the three ties with neighboring control areas: Quebec, New Brunswick and New York. According to the October 11 filing, if the total tie benefits were allocated solely on the basis of a probabilistic analysis, the allocation to the individual interconnections would be: 940 MW to Quebec, 715 MW to New Brunswick and 205 MW to New York. *See* Transmittal Letter at 20. As discussed below, however, this is not how the tie benefits are allocated.

C. HQICCs

The October 11 Filing identified Hydro Quebec Interconnection Capability Credits ("HQICCs"). HQICCs are capacity credits allocated to Interconnection Rights Holders.[5] As discussed below, the identified value of HQICCs affect the allocation of

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[3] The October 11 filing provides the following definition of a probabilistic calculation:

> A probabilistic calculation uses techniques and approaches that may consider factors that may affect the performance of the system and provide a quantified risk assessment using performance indices such as the probability of an unacceptable event. These performance indices are sensitive to factors that affect the reliability of the system. Therefore, quantified descriptions of the system performance can then be entered into the decision-making process."

Transmittal Letter at 13, n. 34.

[4] The October 11 filing explained that the total tie benefits value is obtained from the results of a probabilistic study. See Transmittal Letter at 14 and attached Testimony of Robert Ethier and Peter Wong at 20-22 for a detailed description of the methodology used to arrive at the total tie benefits value of 1860 MW.

[5] Interconnection Rights Holders is defined in the ISO-NE OATT as "...the entities that pay for and hold exclusive Use Rights to the transmission capacity of the Phase I/II HVDCTF, as granted under the Support Agreements and as further provided for under the Restated Use Agreement, either (i) directly, by virtue of being parties to the Support Agreements, or (ii) indirectly ("Indirect IRH(s)"), through a Transfer Agreement. ISO-NE OATT, Schedule 20A.

total tie benefits among the different interconnections between New England and other control areas.[6] HQICCs are valued at 1400 MW based on a deterministic[7] analysis. This value is 460 MW higher than the value under a probabilistic analysis.

D. The Relationship Between HQICCs and Tie Benefit Allocations

Tie benefits for New Brunswick and New York were reduced to reflect HQICCs and "the remainder is allocated between New Brunswick and New York ties based on the results of the probabilistic methodology used to determine the total tie benefit value." *Id.* Thus, the 1,860 MW level of tie benefits were reduced by 1400 MW of HQICCs and the remainder of 460 MW was allocated to New Brunswick and New York on a proportional basis. The resulting tie benefit value allocations are 360 MW to the New Brunswick tie and 100 MW to the New York tie. *Id.* ISO-NE further explained in its filing that if the tie reliability contributions from the neighboring Control Areas were based on the results of the probabilistic calculation without using the deterministically-calculated HQICCs, the tie benefits assumption would be, approximately 715 MW from New Brunswick. Transmittal Letter at 23. Thus, even though 715 MW of capacity are available from New Brunswick as determined from the probabilistic analysis, ISO-NE used a deflated assumption of 360 MW as the tie benefits that were assumed to be available from New Brunswick for the purpose of determining, as discussed below, the amount of capacity that can be procured from Maine.

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[6] As discussed below, the allocation of tie benefits directly affects the value for Local Sourcing Requirements and Maximum Capacity Limits and the amount of capacity that may be imported from other control areas. Transmittal Letter at 6.

[7] According to the October 11 filing, a deterministic approach "uses specific defined system conditions to provide an answer for a particular problem. These methods use one possible state of the world to estimate ore represent the typical outcome for a large range of possible future conditions. This approach ignores the existence of unknowable future conditions, disturbances (variations) or external "shocks" that will determine future conditions." Transmittal Letter at 22, n. 54.

E. Relationship of Tie Benefits to the Forward Capacity Market

1. Maximum Capacity Limits

The Maximum Capacity Limit is "the maximum amount of capacity that can be procured in an export-constrained Load zone to meet the Installed Capacity Requirement." Transmittal Letter at 21. This provision relates to the zonal provisions of the FCM settlement approved by the Commission.[8] Specifically, the FCM orders require "export constraints to be modeled in the auction."[9] Because prior to the first FCA, there was no zonal capacity market, "the reduction in tie benefits attributed to the New Brunswick AC tie to Maine and the New York AC ties due to the treatment of HQICCs"[10] did not arise as an issue affecting both Maine consumers and the integrity of the market process. The Maximum Capacity Limit identified in the October 11 Filing is 3,855 MW. As explained in the filing, "[t]his is the amount of capacity resources that the first Forward Capacity Auction can procure from the Maine Capacity Zone including capacity resource imports over the New Brunswick ties." *Id.*

2. Effect of Reduced New Brunswick Tie Benefit on Maximum Capacity Limit and Forward Capacity Auction

The Maximum Capacity Limit reflects the 360 MW that is allocated to the New Brunswick ties after the HQICCs are subtracted from the total tie benefits rather than the 715 MW that is actually available based on probabilistic modeling. The October 11 filing explained that "the Maximum Capacity Limit is reduced to reflect the flows required to receive the assumed tie benefits from New Brunswick to assist the New

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[8] *See, e.g., ISO New England, Inc. and New England Power Pool,* 118 FERC ¶61,157 (2007).

[9] *Id.*

[10] Transmittal Letter at 23.

England Control Area at times of capacity shortage." *Id.* This means that increased flows from New Brunswick could cause the Maine export constraint to bind and thus limit the amount of capacity deliverable from Maine to the rest of New England. The Filing Parties explained that there would be approximately "a *one-for-one decrease* in the Maximum Capacity Limit *for each MW increase* in tie benefits assigned to the New Brunswick ties." Transmittal Letter at 23. (emphasis added) A decrease in the Maximum Capacity Limit would have a corresponding effect of decreasing the potential amount of capacity resources that could be purchased within the export-constrained area for the Forward Capacity Auction. *Id.* The October 11 filing stated ISO-NE's belief that if the Maximum Capacity Limit were lowered to reflect actual New Brunswick tie benefits, the lower Maximum Capacity Limits would not "materially change the results of the first Forward Capacity Auction, but that "this may not be true for subsequent auctions." Transmittal Letter at 25. The October 11 filing stated that this belief is based on "the existing and new capacity qualified to participate in the first Forward Capacity Auction and their characteristics, including imports from New Brunswick, the price collar that is applicable in the first Forward Capacity Auction, and the proposed Maine Maximum Capacity Limit." *Id.*

F. Disqualification of New Resource in Maine

On November 6, 2008, ISO-NE made an informational filing in which it notified the Commission of units that were qualified and disqualified from participation in the first FCA.[11] Among the 14 units that ISO-NE did not qualify was the Stetson Wind Farm which is expected to be operational in July 2008. The MPUC has protested the Stetson

[11] ISO New England Inc., Docket No. ER08-190-000, "Informational Filing for Qualification in the Forward Capacity Market" at 25.

Wind Farm's disqualification because the deliverability requirement imposed by ISO-NE is not set forth in the tariff but is instead part of a planning procedure never approved by the Commission. The amount of additional capacity that would be provided by the Stetson Wind Farm is a requested summer Qualified Capacity of 9 MW and a proposed winter Qualified Capacity of 26 MW.

G. The Maine Parties' Proposal

The Maine Parties,[12] understanding that there may not be enough time before the first auction to change the allocation of tie benefits, stated that the time limitations did not justify skewing the auction results by incorporating artificial and inaccurate assumptions. The Maine Parties thus proposed an interim solution. The Maine Parties proposed, that in the event that the Commission concludes that there is inadequate time before the first auction to determine how to resolve the relationship of the HQICC calculation with the allocation of tie benefits, it should not approve the Maximum Capacity Limit because to do so would further compound the error of artificially decreasing the amount of capacity assumed to be available from New Brunswick by causing price distortion in the FCA. In short, the Maine Parties stated that the artificial deflation of the New Brunswick tie benefit may prevent the Maine export constraint from binding by artificially increasing as an input to the auction the amount of capacity that can be procured from Maine. Whether or not the transmission constraint binds *directly* impacts the price of capacity in Maine (except to the extent the price collar will prevent the price from going below $4.50 a kWh month). The Maine Parties' short-term solution to prevent the inequitable and inefficient result of artificially decreasing the New Brunswick tie is for the Commission

[12] The "Maine Parties" consist of the MPUC, IECG and the Maine Public Advocate.

to direct ISO-NE to reduce the proposed Maximum Capacity Limit to reflect the *actual* tie benefits available from New Brunswick. The Maine Parties noted that this approach is mechanical and would simply require that one input to the auction be changed. This temporary solution would at least ensure that the First FCA auction results are based on realistic assumptions about the amount of capacity *actually* available in the Maine zone.

H. The December 10 Order

The Commission's December 10 Order accepted ISO-NE and NEPOOL's proposed IC requirement, HQICCs, tie benefits and Maximum Capacity Limit. In response to several parties' (including the Maine Parties) request for a stakeholder process to address problems with tie benefit calculation, the Commission supported a stakeholder process "that revisits tie benefit methodology." December 10 Order at P 90. Specifically, the Commission stated:

> The advent of the FCM regime has ripened the issue of tie benefit calculation methodology for New England stakeholder discussion. Especially pertinent for analysis is the appropriateness of the current methodology for calculating tie benefits from the Hydro Québec interconnection in light of the more stringent availability and deliverability requirements and locational aspect of the FCM, applicable to all accepted resources.

Id. at P 89.

The Commission gave ISO-NE further direction for the stakeholder process:

> In support of a July 2008 filing to the Commission addressing the tie benefit calculation, we encourage ISO-NE and its stakeholders to consider a long-term methodology for determining and allocating tie benefits that is consistent among all interconnections with external control areas, consistent with the locational aspect of the FCM, and does not reflect an overly aggressive estimate of tie benefits based on unrealistic assumptions, i.e., that total New England tie benefits do not exceed the amount determined probabilistically. We will require the July 2008 filing to summarize the results of the stakeholder discussions and outline any proposed changes to the tie benefit methodology to be in effect for the December 2008 FCA.

Id. at P 90.

II. SPECIFICATION OF ERRORS

Pursuant to Rule 713, 18 C.F.R. § 385.713 (2007), the MPUC specifies the following errors in the December 10 Order:

1. The Commission acted arbitrarily and capriciously by failing to address the MPUC's argument that the reduction of available tie benefits from New Brunswick overstates the amount of capacity actually available from Maine.

2. FERC's rejection of the MPUC proposal as having no tariff support was arbitrary and capricious because the reduction of the tie benefits also is not a tariff requirement.

3. The Commission's finding that it is "unlikely" that the export constraint will bind is not supported by the evidence.

4. Even if it appears unlikely that the tie would bind if the correct inputs were used, the commission should have let the auction work as intended rather than starting with distorted inputs.

5. The Commission exceeded its jurisdiction in determining the amount of capacity needed to ensure reliability.

III. STATEMENT OF ISSUES

Pursuant to Rule 713(c) (2) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.713(c) (2) (2007) and Order No. 663-A,[13] the MPUC specifies the following issues to which it requests Commission consideration:

1. Whether the Commission acted arbitrarily and capriciously by failing to address the MPUC's argument that the reduction of available tie benefits from New Brunswick overstates the amount of capacity actually available from Maine. *See, e.g., National Fuel Gas Supply Corporation v. FERC*, 468 F.3d 831 (D.C. Cir. 2006); *PPL Wallingford Energy LLC & PPL EnergyPlus, LLC v. FERC*, 419 F.3d 1194 (D.C. Cir. 2005).

2. Whether FERC's rejection of the MPUC proposal as having no tariff support was arbitrary and capricious because the reduction of the tie

[13] *Revision of Rules of Practice and Procedure Regarding Issue Identification*, Order No. 663-A, 71 FR 14640, FERC Stats. & Regs. ¶ 31,211 (2006) ("Order No. 663-A").

benefits also is not a tariff requirement. *See, e.g.*, *National Fuel Gas Supply Corporation v. FERC*, 468 F.3d 831 (D.C. Cir. 2006); *PPL Wallingford Energy LLC & PPL EnergyPlus, LLC v. FERC*, 419 F.3d 1194 (D.C. Cir. 2005).

3. Whether the Commission's finding that it is "unlikely" that the export constraint will bind is supported by the evidence. *Farmers Union Cent. Exch., Inc. v. FERC*, 734 F.2d 1486, 1499 & n.39 (D.C. Cir. 1984), *quoting* 5 U.S.C. § 706(2)(A) *and citing* 5 U.S.C. § 706(2)(E); *id.* at 1499, *quoting Burlington Truck Lines, Inc. v. United States*, 371 U.S. 156, 158 (1962). *See also Time Warner Entm't Co., L.P. v. FCC*, 240 F.3d 1126, 1137 (D.C. Cir. 2001); *Arco Oil & Gas Co. v. FERC*, 932 F.2d 1501, 1504 (D.C. Cir. 1991).

4. Whether even if it appears unlikely that the tie would bind if the correct inputs were used, the Commission should have let the auction work as intended rather than starting with distorted inputs. *Farmers Union Cent. Exch., Inc. v. FERC*, 734 F.2d 1486, 1499 & n.39 (D.C. Cir. 1984), *quoting* 5 U.S.C. § 706(2)(A) *and citing* 5 U.S.C. § 706(2)(E); *id.* at 1499, *quoting Burlington Truck Lines, Inc. v. United States*, 371 U.S. 156, 158 (1962). *See also Time Warner Entm't Co., L.P. v. FCC*, 240 F.3d 1126, 1137 (D.C. Cir. 2001); *Arco Oil & Gas Co. v. FERC*, 932 F.2d 1501, 1504 (D.C. Cir. 1991).

5. Whether the Commission exceeded its jurisdiction in determining the amount of capacity needed to ensure reliability. *See* 16 U.S.C. § 824 (b)(1), 824(f) (2000).

IV. ARGUMENT

A. The Commission Acted Arbitrarily and Capriciously in Failing to Address the MPUC's Argument that the Understatement of Tie Benefits Assigned to New Brunswick Overstate the Amount of Capacity Available From Maine

In their protest, the Maine Parties stated that the probabilistic analysis performed by ISO-NE demonstrates that approximately 715 MW of benefits are available from the New Brunswick control area. The Maine Parties further stated that by deducting the deterministically determined HQICCs from the total benefits, ISO-NE has *artificially* reduced the amount of tie benefits it assumes are available from New Brunswick from 715 MW to 360 MW and that this reduction *understates* the amount of capacity available

from New Brunswick by 355 MW. Finally, the Maine Parties stated that the artificial reduction of New Brunswick tie benefits has the corresponding effect of *overstating* how much capacity can be delivered from the export constrained zone. Thus, the Maximum Capacity Limit of the Maine Load Zone would be approximately 3500 MW rather than 3,855 if the New Brunswick tie benefits were not *artificially* reduced. Further, by inflating the amount of capacity deliverable from the Maine zone, ISO-NE is distorting inputs to the FCA in a way that can impact prices both in Maine and in the rest of pool. The result, the Maine Parties stated, was inconsistent with ISO-NE's commitment to modeling export constraints in the auction so that the *auction prices* will determine whether or not the constraint will bind.[14] Because of the artificial assumptions made here, the inflated Maximum Capacity Limit will skew the auction because the *inflated* Maximum Capacity Limit, rather than the FCM auction bids, can affect whether or not the export constraint will bind.

In the December 10 Order, the Commission acknowledges that the determination of tie benefits is, for the first time, linked to the determination of locational prices, particularly prices in Maine. Specifically, the December 10 Order states:

> We understand that the 2010-2011 Capability Year represents the first time that the capacity market will have a locational basis, allowing for price separation in the capacity zones. We also are aware that tie benefits assumptions may affect those prices, including whether modeled constraints bind in the auction.

[14] *See ISO-New England, Inc.*, 117 FERC ¶ 61,133, P.118 (2006) (granting the MPUC request for clarification that export constraints will be modeled in the auction and conveying ISO-NE's commitment to "model the constraints before the auction [so that] that the auction itself will determine whether the constraints will bind so as to establish separate capacity zones.")

December 10 Order at P 54. Further, the Commission does not contest that the tie benefits attributable to New Brunswick would be at the higher level of 715 MW rather than 360 MW but for the reduction from tie benefits of the deterministically determined HQICCs. Moverover, the Commission acknowledges that "the relatively lower New Brunswick tie benefits assumption resulting from the HQ Capability Credit deterministic methodology means that less of Maine's export transmission capacity will be devoted to tie benefits, resulting in excess Maine transmission capacity being available for purchase in the FCA." *Id.* at P 52. However, the December 10 Order disposes of the Maine Parties' protest by stating that "the purpose of the FCA is not to ensure that Maine remains an export-constrained zone but to procure the resources necessary to satisfy the Installed Capacity Requirement in the New England region, subject to the applicable transmission and other constraints." *Id.* In so concluding, the Commission failed to address the MPUC's argument that the tie benefits understatement (and corresponding MCL overstatement) creates a distortion in the FCA. Further, the Commission's articulation of the purpose of the FCA "to procure the resources necessary to satisfy the Installed Capacity Requirement in the New England region," is devoid of any recognition of the locational aspects of the FCA. In contrast, the Commission, in its order approving the FCM settlement, recognized the importance of recognizing location and transmission constraints in setting prices.

> Transmission constraints in New England can restrict the ability to deliver energy from some locations to others, and a market design for capacity should reflect transmission constraints to send correct price signals for investment. We believe that the settlement provides for a means to recognize transmission constraints that is, on balance, reasonable in light of competing considerations.

See Devon Power LLC, 115 FERC ¶ 61,340 (2006) ("Settlement Order") at P 122. Here, the Commission arbitrarily ignored the impact of understating the ties by dismissing the importance of the locational component in the FCA market structure even though the locational component was a critical factor in the Commission's acceptance of the FCM settlement.

B. FERC's rejection of the MPUC proposal as Having No Tariff Support Was Arbitrary and Capricious Because the Reduction of the Tie Benefits Also is Not a Tariff Requirement

The December 10 Order appears to rest its rejection of the MPUC proposal to reduce the Maine Capacity Limit to reflect the proper value of the tie benefits (before they were artificially reduced) on two factors. The first is that the Maximum Capacity Limit is based on the IC requirements. The second is that the MPUC proposal has "no tariff support." December 10 Order at P 54. The first justification for the Maine Capacity Limit however is circular. The IC requirements are determined in part by the artificially reduced tie benefits to which the MPUC objected. That the MPUC proposal is not tariff based also is not a justifiable ground for rejection since the reduction of tie benefits also is not a tariff based proposal as acknowledged by the Commission. The Commission recognized that the ISO-NE was faced with the problem of reconciling two distinct areas of the tariff: (1) that the ISO-NE is required to calculate tie benefits "using a probabilistic multi-area reliability model," Market Rule 1, section III.12.9; and (2) that the ISO-NE is required to calculate the MW value of the tie benefits over the HQ Interconnection and determine the HQICCs using a deterministic methodology, Market Rule 1, section III.12.9.2. Importantly, the Commission found that "the tariff does not specifically address how to reconcile section III.12.9 with section III.12.92." *Id.* at P 54.

The Commission nevertheless concluded that the manner in which ISO-NE and NEPOOL reconciled the provisions was just and reasonable and consistent with the tariff. Thus, although the Commission found that the reconciliation of the two tariff provisions was just and reasonable, this manner of reconciliation was *not directed by any language in the tariff.* Accordingly, the Commission's rejection of the MPUC's proposal as not "tariff-based" does not provide a reasoned basis for its decision. Further, the Commission incorrectly states the "Maine Parties would have ISO-NE ignore section III.12.9.2 of the tariff insofar as it reduces the modeled tie benefits from New Brunswick. This statement is patently wrong because the Commission itself acknowledges that section III.12.9.2 of the tariff does *not* require ISO-NE to reduce the modeled tie benefits from New Brunswick. Instead, it requires that HQICCs be calculated using a deterministic methodology. As discussed above, the Commission makes quite clear that the tariff itself does not reconcile this provision with the requirement that tie benefits be determined using a probabilistic analysis. Further, the Maine Parties proposal did not change the tie benefits assumption but limited the distorting effects of the reduced tie benefits by calculating the MCL as though the tie benefits were not reduced.

C. The Commission's Finding That It is "Unlikely" That The Export Constraint Will Bind Is Not Supported by the Evidence

ISO-NE made a number of assertions to support its conclusion that it was unlikely that the constraint would bind in the auction even if the Maine Maximum Capacity Limit reflected the full probabilistic calculation of New Brunswick tie benefits (715 MW). ISO-NE noted (1) the significant pool-wide capacity surplus; (2) the relatively small capacity surplus in Maine and (3) the existence of a price floor applicable to all zones. The Commission agreed with the ISO-NE's assertions, stating:

> Finally, although the Commission has not approved the November 6 Informational Filing that ISO-NE cites in support of its contention that the Maine Maximum Capacity Limit will not bind for the 2010-2011 Capability Year, we agree with ISO-NE that it appears unlikely that the constraint will bind, even with a reduced Maximum Capacity Limit as requested by the Maine Parties.

Id. at P 54. However, the amount of Maine's capacity surplus is in question because the MPUC has challenged ISO-NE's disqualification of the Stetson Wind Power facility in Maine from participation in the first FCA. Further, the Commission's acceptance of ISO-NE's conclusion that it was unlikely that the constraint will bind fails to recognize the role that price will play in determining whether a constraint will bind. At this time it is impossible to predict whether the pricing patterns in the rest of pool and Maine, but even a small surplus could result in a constraint binding if more Maine capacity is selected in the auction than can be delivered. This will be a function of pricing in the auction. Thus, simply pointing to a large surplus in the rest of pool and a small surplus in Maine does not answer the question of whether the export constraint will bind in the auction. While ISO-NE asserts that its belief, in part, is based the effect of the price floor, this is a relevant factor only if there is *no up-side* price risk. In other words, if it is clear that *but for the floor*, prices would be below $4.50 a kW month in the first auction, the price floor would be relevant.[15] However, no one knows what prices the auction will produce at this time. What is known is that the Maximum Capacity Limit has a direct relationship to the amount of capacity that can be purchased from Maine and that this factor has a direct relationship to the price of capacity in Maine.

[15] The Commission failed to address this point in the December 10 Order.

D. Even If It Appears Unlikely That the Tie Would Bind If The Correct Inputs were Used, the Commission Should Have Let the Auction Work As Intended Rather Than Starting With Distorted Inputs

Even if the record supported the Commission's finding that it is unlikely that the constraint would bind even if the New Brunswick tie benefits were not artificially reduced (and it does not), this finding does not justify allowing distorted inputs into the model. By accepting the distorted inputs, the Commission is allowing ISO-NE and NEPOOL to go forward with a methodology that may prevent the FCA from working as intended in recognizing locational differences in FCA prices. Since the bedrock principle of the FCM is locationality, this result is unjust and unreasonable.

E. The Commission Exceeded its Jurisdiction in Determining the The Amount of the Amount of Capacity Needed to Ensure Reliability

The MPUC reserved its arguments that the Commission does not have the authority to determine the installed capacity requirement and incorporated by reference arguments previously made on this issue. The Commission maintained that it has jurisdiction over the Installed Capacity Requirement "because it is a component of jurisdictional wholesale rate." *Id.* at P 81 citing *ISO New England Inc.*, 121 FERC ¶ 61,125, at P 33-39 (2007). The Commission's assertion of jurisdiction is contrary to the provisions of the FPA because the amount of capacity needed to assure reliability is a matter left to the states. *See* 16 U.S.C. § 824 (b)(1), 824(f) (2000).

V. CONCLUSION

For the reasons stated hereinabove, the MPUC respectfully requests that the Commission grant its rehearing request and direct ISO-NE to reduce the Maximum Capacity Limit in the manner proposed by the MPUC.

Dated: January 9, 2008

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that I have this day served the foregoing document upon each person designated on the service list compiled by the Secretary in this proceeding either by U.S. Mail or electronic service, as appropriate. Dated at Washington, D.C., this 9th day of January, 2008.

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